

ASSEMBLY BILL

No. 1338

Introduced by Assembly Member Chavez

February 21, 2003

An act to amend Sections 18662 and 18668 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1338, as introduced, Chavez. Personal income and bank and corporation taxes: real estate withholding requirements.

Existing law requires the transferee of a California real property interest, in specified circumstances, to withhold 3¹/₃% of the purchase price of the property when the property is acquired from either an individual or a corporation that has no permanent place of business in this state after the transfer.

This bill would provide that, instead of withholding 3¹/₃% of the sales price, the transferee, at the election of the transferor, may withhold that portion of the gain required to be recognized by the transferor that is determined by the highest marginal rate of the state personal income tax. This bill would also revise withholding requirements for corporations with no permanent place of business in California to conform to the withholding requirements for individual transferors.

Existing law relieves a real estate escrow person, as defined by that law, from the liability for withholding if that person properly informs the transferee of the withholding requirements. Existing law also prohibits an assessment of penalty against the real estate escrow person, but not against the transferee, for failure to withhold if the transferor reports the gain on the sale of property and pays the proper amount of tax by the due date or extended due date of the tax return.

This bill would provide that a real estate escrow person and the transferee are jointly and severally liable for the withholding required by state law. This bill would also remove the prohibition on the assessment of a penalty against a real estate escrow person for failure to withhold properly where the transferor reports the gain on the sale and pays the proper amount of tax by the due date or extended due date of the tax return.

Existing law does not require withholding on any gain recognized by an individual transferor from the sale of his or her principal residence.

This bill would require withholding on the portion of any gain required to be recognized by an individual transferor from the sale of his or her principal residence that is not excluded under a specified provision of the Internal Revenue Code.

This bill would also clarify that transfers of real property to controlled corporations and partnerships as contributions to capital, and sales of a decedent's principal residence by estates, are not subject to these withholding requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 18662 of the Revenue and Taxation
2 Code is amended to read:

3 18662. (a) The Franchise Tax Board may, by regulation,
4 require any person, in whatever capacity acting (including lessees
5 or mortgagors of real or personal property, fiduciaries, employers,
6 and any officer or department of the state or any political
7 subdivision or agency of the state, or any city organized under a
8 freeholder's charter, or any political body not a subdivision or
9 agency of the state), having the control, receipt, custody, disposal,
10 or payment of items of income specified in subdivision (b), to
11 withhold an amount, determined by the Franchise Tax Board to
12 reasonably represent the amount of tax due when the items of
13 income are included with other income of the taxpayer, and to
14 transmit the amount withheld to the Franchise Tax Board at the
15 time as it may designate.

16 (b) The items of income referred to in subdivision (a) are
17 interest, dividends, rents, prizes and winnings, premiums,
18 annuities, emoluments, compensation for services, including



bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person failing to withhold from any payments any amounts required by subdivision (a) to be withheld is liable for the amount withheld or the amount of taxes due from the person to whom the payments are made to an extent not in excess of the amounts required to be withheld, whichever is greater, unless it is shown that the failure to withhold is due to reasonable cause.

~~(e) (1) In the case of any disposition of a California real property interest by an individual, the transferee (including for this purpose any intermediary or accommodator in a deferred exchange) shall be required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the California real property conveyed.~~

~~(2) Notwithstanding any other provision of this subdivision, all of the following shall apply:~~

~~(A) No transferee shall be required to withhold any amount under this subdivision unless the sales price of the California real property conveyed exceeds one hundred thousand dollars (\$100,000).~~

~~(B) No transferee (other than an intermediary or an accommodator in a deferred exchange) shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.~~

~~(C) No transferee shall be required to withhold under this subdivision when the transferee is a corporate beneficiary under a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.~~

~~(D) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based upon all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the California real property being conveyed is the principal residence of the transferor (within the meaning of Section 121 of the Internal Revenue Code).~~

1 ~~(E) (i) No transferee (including for this purpose any~~
2 ~~intermediary or accommodator in a deferred exchange) shall be~~
3 ~~required to withhold any amount under this subdivision if the~~
4 ~~transferee, in good faith and based on all the information of which~~
5 ~~he or she has knowledge, relies on a written certificate executed by~~
6 ~~the transferor, certifying under penalty of perjury, that the~~
7 ~~California real property being conveyed is exchanged, or will be~~
8 ~~exchanged, for property of like kind (within the meaning of~~
9 ~~Section 1031 of the Internal Revenue Code), but only to the extent~~
10 ~~of the amount of the gain not required to be recognized for~~
11 ~~California income tax purposes under Section 1031 of the Internal~~
12 ~~Revenue Code.~~

13 ~~(ii) Clause (i) shall not apply to the extent that any exchange~~
14 ~~does not qualify for nonrecognition treatment for California~~
15 ~~income tax purposes under Section 1031 of the Internal Revenue~~
16 ~~Code, in whole or in part, due to the failure of the transaction to~~
17 ~~comply with the provisions of Section 1031(a)(3) of the Internal~~
18 ~~Revenue Code, relating to requirement that property be identified~~
19 ~~and that exchange be completed not more than 180 days after~~
20 ~~transfer of the exchanged property.~~

21 ~~(iii) In any case where clause (ii) applies, the transferee~~
22 ~~(including for this purpose any intermediary or accommodator in~~
23 ~~a deferred exchange) shall be required to notify the Franchise Tax~~
24 ~~Board in writing within 10 days of the expiration of the statutory~~
25 ~~periods specified in Section 1031(a)(3) of the Internal Revenue~~
26 ~~Code and shall thereafter remit the applicable withholding~~
27 ~~amounts determined under this subdivision in accordance with~~
28 ~~paragraph (4).~~

29 ~~(F) No transferee shall be required to withhold any amount~~
30 ~~under this subdivision if the transferee, in good faith and based on~~
31 ~~all the information of which he or she has knowledge, relies on a~~
32 ~~written certificate executed by the transferor, certifying under~~
33 ~~penalty of perjury, that the California real property has been~~
34 ~~compulsorily or involuntarily converted (within the meaning of~~
35 ~~Section 1033 of the Internal Revenue Code) and that the transferor~~
36 ~~intends to acquire property similar or related in service or use so~~
37 ~~as to be eligible for nonrecognition of gain for California income~~
38 ~~tax purposes under Section 1033 of the Internal Revenue Code.~~

39 ~~(G) No transferee shall be required to withhold any amount~~
40 ~~under this subdivision if the transferee, in good faith and based on~~

~~all the information which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, that the transaction will result in a loss for California income tax purposes.~~

~~(3) (A) This subdivision applies to any disposition of a California real property interest resulting in a taxable or net gain by:~~

~~(A) A person other than a corporation or partnership, as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, or~~

~~(B) A corporation, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:~~

~~(i) It is not organized and existing under the laws of California.~~

~~(ii) It does not qualify with the office of the Secretary of State to transact business in California.~~

~~(iii) It does not maintain and staff a permanent office in California.~~

~~(2) (A) Except as provided in subparagraph (B), in the case of any disposition of a California real property interest by a transferor described in paragraph (1), the transferee (including for this purpose any intermediary or accommodator in a deferred exchange) or real estate escrow person is required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the California real property conveyed.~~

~~(B) In the case where the transferor makes an election under this subparagraph, the transferee (including for this purpose any intermediary or accommodator in a deferred exchange) or real estate escrow person is required to withhold an amount equal to the amount the transferor specifies in a written certificate executed by the transferor, certifying under penalty of perjury, that the specified amount is an amount at least equal to the taxable or net gain required to be recognized under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) on the disposition of the California real property, multiplied by the rate specified in Section 23151 (or Section 23186 for financial corporations) for transferor corporations and by the highest rate specified in Section 17041 for all other transferors.~~

1 (3) Notwithstanding any other provision of this subdivision, all
2 of the following shall apply:

3 (A) No transferee or real estate escrow person is required to
4 withhold any amount under this subdivision unless the sales price
5 of the California real property conveyed exceeds one hundred
6 thousand dollars (\$100,000).

7 (B) No transferee (other than an intermediary or an
8 accommodator in a deferred exchange) is required to withhold any
9 amount under this subdivision unless written notification of the
10 withholding requirements of this subdivision has been provided by
11 the real estate escrow person.

12 (C) (i) No transferee or real estate escrow person is required
13 to withhold under this subdivision when the transferee is a
14 beneficiary under a mortgage or beneficiary under a deed of trust
15 and the California real property is acquired in judicial or
16 nonjudicial foreclosure or by a deed in lieu of foreclosure.

17 (ii) No transferee is required to withhold under this subdivision
18 when the transferor is a bank acting as trustee other than a trustee
19 of a deed of trust.

20 (D) No transferee (including for this purpose any intermediary
21 or accommodator in a deferred exchange) or real estate escrow
22 person is required to withhold any amount under this subdivision
23 if the transferee or real estate escrow person, in good faith and
24 based on all the information of which he or she has knowledge,
25 relies on a written certificate executed by the transferor, certifying,
26 under penalty of perjury, one of the following:

27 (i) (I) Except as provided in subclause (II), the real property
28 being conveyed is the transferor's (or a decedent, whose estate is
29 the transferor) principal residence (within the meaning of Section
30 121 of the Internal Revenue Code) and all of the gain on the sale
31 of the principal residence is excludable under Section 121 of the
32 Internal Revenue Code, relating to the exclusion of gain from the
33 sale of a principal residence.

34 (II) In the case of any disposition of a principal residence
35 (within the meaning of Section 121 of the Internal Revenue Code)
36 of the transferor (or a decedent, whose estate is the transferor) in
37 which the entire gain is not eligible for the exclusion under Section
38 121 of the Internal Revenue Code, only the excess gain not eligible
39 for the exclusion under Section 121 of the Internal Revenue Code
40 is subject to withholding under this section and the amount to be

1 withheld on that excess gain shall be determined in the same
2 manner as described in subparagraph (B) of paragraph (2).

3 (ii) (I) The California real property being conveyed is being
4 exchanged, or will be exchanged, for property of like kind (within
5 the meaning of Section 1031 of the Internal Revenue Code), but
6 only to the extent of the amount of the gain not required to be
7 recognized for California income or franchise tax purposes under
8 Section 1031 of the Internal Revenue Code.

9 (II) Subclause (I) may not apply if an exchange does not qualify
10 for nonrecognition treatment for California income or franchise
11 tax purposes under Section 1031 of the Internal Revenue Code, in
12 whole or in part, due to the failure of the transaction to comply with
13 the provisions of Section 1031(a)(3) of the Internal Revenue Code,
14 relating to the requirement that property be identified and that the
15 exchange be completed not more than 180 days after the transfer
16 of the exchanged property.

17 (III) In any case where clause (ii) applies, the transferee
18 (including for this purpose any intermediary or accommodator in
19 a deferred exchange) or real estate escrow person is required to
20 notify the Franchise Tax Board in writing within 10 days of the
21 expiration of the statutory periods specified in Section 1031(a)(3)
22 of the Internal Revenue Code and thereafter remit the applicable
23 withholding amounts determined under this subdivision in
24 accordance with paragraph (4).

25 (iii) The California real property has been compulsorily or
26 involuntarily converted (within the meaning of Section 1033 of the
27 Internal Revenue Code) and the transferor intends to acquire
28 property similar or related in service or use so as to be eligible for
29 nonrecognition of gain for California income tax purposes under
30 Section 1033 of the Internal Revenue Code.

31 (iv) The transaction will result in either a net loss or a net gain
32 not required to be recognized for California income or franchise
33 tax purposes.

34 (v) The transferor is a corporation with a permanent place of
35 business in California.

36 (E) (i) In the case of any transaction otherwise subject to this
37 subdivision that qualifies as an “installment sale” (within the
38 meaning of Section 453(b) of the Internal Revenue Code) for
39 California income tax purposes, the provisions of this subdivision
40 may, upon the irrevocable written election of the transferee, be

1 separately applied to each payment to be made under the terms of
2 the installment sale agreement between the parties.

3 ~~(B)~~

4 (ii) For purposes of ~~subparagraph (A)~~ clause (i), subparagraph
5 (A) of paragraph ~~(2)~~ *shall* (3) *does not* apply to each individual
6 payment to be received under the terms of the installment sale
7 agreement.

8 ~~(C)~~

9 (iii) The election under this paragraph shall be made at the time,
10 and in the form and manner, specified by the Franchise Tax Board
11 in forms and instructions, except that the form shall, at a minimum,
12 include the requirement specified in ~~subparagraph (D)~~ clause (iv)
13 of this ~~paragraph~~ subparagraph.

14 ~~(D)~~

15 (iv) The election under this paragraph ~~shall only be~~ *is valid only*
16 if the transferee agrees to withhold and remit from each installment
17 payment the amount specified under this subdivision in the form
18 and manner, and at the time, specified in paragraph (4).

19 (4) (A) Amounts withheld and payments made in accordance
20 with this subdivision shall be reported and remitted to the
21 Franchise Tax Board in the form and manner and at the time
22 specified by the Franchise Tax Board.

23 (B) *The transferor shall submit a copy of the written certificate*
24 *specified in subparagraph (D), executed by the transferor, and*
25 *supporting documentation for the reduced withholding to the*
26 *Franchise Tax Board upon request.*

27 (5) For purposes of this subdivision, “California real property
28 interest” means an interest in real property located in California
29 and defined in Section 897(c)(1)(A)(i) of the Internal Revenue
30 Code.

31 (6) For purposes of this subdivision, “real estate escrow
32 person” means any of the following persons involved in the real
33 estate transaction:

34 (A) The person (including any attorney, escrow company, or
35 title company) responsible for closing the transaction.

36 (B) If no other person described in subparagraph (A) is
37 responsible for closing the transaction, then any other person who
38 receives and disburses the consideration or value for the interest
39 or property conveyed.

1 (7) (A) ~~Unless~~ *The transferee and the real estate person are*
2 *equally and severally liable for the withholding required under this*
3 *subdivision.*

4 (B) *Unless* the real estate escrow person provides “assistance,”
5 it shall be unlawful for any real estate escrow person to charge any
6 customer for complying with the requirements of this subdivision.

7 ~~(B)–~~

8 (C) For purposes of this paragraph, “assistance” includes, but
9 is not limited to, helping the parties clarify with the Franchise Tax
10 Board the issue of whether withholding is required under this
11 subdivision or, upon request of the parties, withholding an amount
12 under this subdivision and remitting that amount to the Franchise
13 Tax Board.

14 ~~(C)–~~

15 (D) For purposes of this paragraph, “assistance” does not
16 include providing the written notification of the withholding
17 requirements of this subdivision.

18 ~~(D)–~~

19 (E) In a case where the real estate escrow person provides
20 “assistance” in complying with the withholding requirements of
21 this subdivision, it shall be unlawful for the real estate escrow
22 person to charge any customer a fee that exceeds forty-five dollars
23 (\$45).

24 (8) For purposes of this subdivision, “sales price” means the
25 sum of all of the following:

26 (A) The cash paid, or to be paid, but excluding for this purpose
27 any stated or unstated interest or original issue discount (as
28 determined under Sections 1271 through 1275, inclusive, of the
29 Internal Revenue Code).

30 (B) The fair market value of other property transferred, or to be
31 transferred.

32 (C) The outstanding amount of any liability assumed by the
33 transferee or to which the California real property interest is
34 subject immediately before and after the transfer.

35 ~~(f) (1) In the case of any disposition of a California real~~
36 ~~property interest by a person (but not a partnership as determined~~
37 ~~in accordance with Subchapter K of Chapter 1 of Subtitle A of the~~
38 ~~Internal Revenue Code, or a corporation, or an individual), when~~
39 ~~the return required to be filed with the Secretary of the Treasury~~
40 ~~under Section 6045(e) of the Internal Revenue Code indicates, or~~

~~the authorization for the disbursement of the transaction's funds instructs, that the funds be disbursed either to a transferor with a last known street address outside the boundaries of this state at the time of the transfer of the title to the California real property or to the financial intermediary of the transferor, the transferee shall be required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the California real property conveyed.~~

~~(2) In the case of any disposition of a California real property interest by a corporation, the transferee shall be required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price of the California real property conveyed, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:~~

~~(A) It is not organized and existing under the laws of California.~~

~~(B) It does not qualify with the office of the Secretary of State to transact business in California.~~

~~(C) It does not maintain and staff a permanent office in California.~~

~~(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:~~

~~(A) No transferee shall be required to withhold any amount under this subdivision if the sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000).~~

~~(B) No transferee shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.~~

~~(C) No transferee shall be required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.~~

~~(D) No transferee shall be required to withhold under this subdivision when the transferee is a corporate beneficiary under a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.~~

1 ~~(E) No transferee shall be required to withhold any amount~~
2 ~~under this subdivision if the transferee, in good faith and based on~~
3 ~~all the information of which he or she has knowledge, relies on a~~
4 ~~written certificate executed by the transferor, certifying under~~
5 ~~penalty of perjury that the transferor is a corporation with a~~
6 ~~permanent place of business in California.~~

7 ~~(4) (A) At the request of the transferor, the Franchise Tax~~
8 ~~Board may authorize that a reduced amount or no amount be~~
9 ~~withheld under this subdivision if the Franchise Tax Board~~
10 ~~determines that to substitute a reduced amount or no amount shall~~
11 ~~not jeopardize the collection of tax imposed by Part 10~~
12 ~~(commencing with Section 17001) or Part 11 (commencing with~~
13 ~~Section 23001). If the transferor provides documentation~~
14 ~~sufficient for the Franchise Tax Board to determine the actual gain~~
15 ~~required to be recognized on the transaction, the Franchise Tax~~
16 ~~Board may authorize a reduced amount based on the amount of the~~
17 ~~gain, as determined, which will result in a sum which is~~
18 ~~substantially equivalent to the amount of tax reasonably estimated~~
19 ~~to be due under Part 10 (commencing with Section 17001) or Part~~
20 ~~11 (commencing with Section 23001) from the inclusion of the~~
21 ~~gain in the gross amount of the transferor.~~

22 ~~(B) Within 45 days after receiving a request that a reduced~~
23 ~~amount or no amount be withheld, the Franchise Tax Board shall~~
24 ~~either authorize a reduced amount or no amount, or deny the~~
25 ~~request.~~

26 ~~(C) In the case where the parties to the transaction are~~
27 ~~requesting that a reduced amount or no amount be withheld and the~~
28 ~~response by the Franchise Tax Board to the request has not been~~
29 ~~received at the time title to the California real property is~~
30 ~~transferred, the parties may direct the real estate escrow person to~~
31 ~~hold in trust for 45 days the amount required to be withheld under~~
32 ~~this subdivision. The parties shall instruct the real estate escrow~~
33 ~~person that at the end of 45 days the real estate escrow person shall~~
34 ~~remit the amount withheld to the Franchise Tax Board in~~
35 ~~accordance with this section, unless the Franchise Tax Board has~~
36 ~~authorized that a reduced amount or no amount be withheld.~~

37 ~~(5) Amounts withheld and payments made in accordance with~~
38 ~~this subdivision shall be reported and remitted to the Franchise Tax~~
39 ~~Board in the form and at the time as the Franchise Tax Board shall~~
40 ~~determine.~~

~~(6) “California real property interest” means an interest in real property located in California and defined in Section 897(e)(1)(A)(i) of the Internal Revenue Code.~~

~~(7) For purposes of this subdivision, “financial intermediary” means an agent for the purpose of receiving and transferring funds to a principal.~~

~~(8) For purposes of this subdivision, “real estate escrow person” means any of the following persons involved in the real estate transaction:~~

~~(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.~~

~~(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.~~

~~(9) (A) Unless the real estate escrow person provides “assistance,” it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.~~

~~(B) For purposes of this paragraph, “assistance” includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision, helping the parties request that the Franchise Tax Board authorize a reduced amount or no amount be withheld under this subdivision, or, upon request of the parties, withholding an amount under this subdivision and remitting the amount to the Franchise Tax Board.~~

~~(C) For purposes of this paragraph, “assistance” does not include providing the written notification of the withholding requirements of this subdivision, or providing the certification that the transferor is a corporation with a permanent place of business in California.~~

~~(D) In a case where the real estate escrow person provides “assistance” in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars (\$45).~~

~~(10) For purposes of this subdivision, “sales price” means the sum of all of the following:~~

~~(A) The cash paid, or to be paid. The term “cash paid, or to be paid” does not include stated or unstated interest or original issue discount (as determined by Sections 1271 to 1275, inclusive, of the Internal Revenue Code).~~

~~(B) The fair market value of other property transferred, or to be transferred.~~

~~(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.~~

~~(g)–~~

(f) Whenever any person has withheld any amount pursuant to this section, the amount so withheld shall be held in trust for the State of California. The amount of the fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

~~(h)–~~

(g) Withholding ~~shall not be~~ *is not* required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors’ meeting.

~~(i)–~~

(h) In the case of any payment described in subdivision ~~(h)~~ (g), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

~~(j)–~~

(i) (1) The amendments to this section made by the act adding ~~this subdivision shall only apply~~ *Chapter 488 of the Statutes of 2002 apply* to dispositions of California real property interests that occur on or after January 1, 2003.

(2) In the case of any payments received on or after January 1, 2003, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2003, the amendments to

1 this section made by the act adding this subdivision shall Chapter
2 488 of the Statutes of 2002 do not apply to those payments.

3 SEC. 2. Section 18668 of the Revenue and Taxation Code is
4 amended to read:

5 18668. (a) Every person required under this article to deduct
6 and withhold any tax is hereby made liable for that tax, to the
7 extent provided by this section and, insofar as they are not
8 inconsistent with this article, all the provisions of this part relating
9 to penalties, interest, assessment, and collections shall apply to
10 persons subject to this part, and for these purposes any amount
11 required to be deducted and paid to the Franchise Tax Board under
12 this article shall be considered the tax of the person. Any person
13 who fails to withhold from any payments any amount required to
14 be withheld under this article is liable for the amount withheld or
15 the amount of taxes due from the taxpayer to whom the payments
16 are made but not in excess of the amount required to be withheld,
17 whichever is more, unless it is shown that the failure to withhold
18 is due to reasonable cause.

19 (b) If any amount required to be withheld under this article is
20 not paid to the Franchise Tax Board on or before the due date
21 required by regulations, interest shall be assessed at the adjusted
22 annual rate established pursuant to Section 19521, computed from
23 the due date to the date paid.

24 (c) Whenever any person has withheld any amount pursuant to
25 this article, the amount so withheld shall be held to be a special
26 fund in trust for the State of California.

27 (d) In lieu of the amount provided for in subdivision (a), ~~unless~~
28 ~~it is shown that the failure to withhold is due to reasonable cause,~~
29 whenever any transferee *or real estate escrow person* is required
30 to withhold any amount pursuant to subdivision (e) ~~or (f)~~ of
31 Section 18662, the transferee *or real estate escrow person* is liable
32 for the greater of the following amounts for failure to withhold
33 ~~only after the transferee, as specified, is notified in writing of the~~
34 ~~requirements under subdivision (e) or (f) of Section 18662:~~

35 (1) Five hundred dollars (\$500).

36 (2) Ten percent of the amount required to be withheld under
37 subdivision (e) ~~or (f)~~ of Section 18662.

38 (e) (1) ~~Unless~~ *Notwithstanding subdivision (d), unless* it is
39 shown that the failure to notify is due to reasonable cause, *only* the
40 real estate escrow person ~~shall be~~ *is* liable for the amount specified

in subdivision (d), when written notification of the withholding requirements of subdivision (e) ~~or (f)~~ of Section 18662 is not provided to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) and the California real property disposition is subject to withholding under subdivision (e) ~~or (f)~~ of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) in substantially the same form as follows:

“In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to $3\frac{1}{3}$ percent of the sales price *or the amount that is specified in a written certificate issued by the transferor* in the case of a disposition of California real property interest by either:

1. A seller who is an individual, *trust, or estate* or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. A corporate seller that has no permanent place of business in California *immediately after the transfer of title to the California real property.*

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation with a permanent place of business in California, OR

3. The seller, who is an individual, *trust, estate or a corporation without a permanent place of business in California* executes a written certificate, under the penalty of perjury, of any of the following:

A. ~~That the~~ The California real property being conveyed is the seller’s principal residence (within the meaning of Section 121 of

1 the Internal Revenue Code) *and all of the gain on the sale of the*
2 *principal residence is excludable under Section 121 of the Internal*
3 *Revenue Code, relating to the exclusion of gain from the sale of a*
4 *principal residence.*

5 B. ~~That the~~ The California real property being conveyed is or
6 will be exchanged for property of like kind (within the meaning of
7 Section 1031 of the Internal Revenue Code), but only to the extent
8 of the amount of gain not required to be recognized for California
9 income tax purposes under Section 1031 of the Internal Revenue
10 Code.

11 C. ~~That the~~ The California real property has been compulsorily
12 or involuntarily converted (within the meaning of Section 1033 of
13 the Internal Revenue Code) and that the seller intends to acquire
14 property similar or related in service or use so as to be eligible for
15 nonrecognition of gain for California income tax purposes under
16 Section 1033 of the Internal Revenue Code.

17 D. ~~That the~~ The California real property transaction will result
18 in a loss for California income tax purposes.

19 The seller is subject to penalty for knowingly filing a fraudulent
20 certificate for the purpose of avoiding the withholding
21 requirement.

22 ~~The California statutes referenced above include provisions~~
23 ~~which authorize the Franchise Tax Board to grant reduced~~
24 ~~withholding and waivers from withholding on a case-by-case basis~~
25 ~~for corporations or other entities.~~
26

27 ~~(3) The real estate escrow person shall not be liable under this~~
28 ~~subdivision, if the tax due as a result of the disposition of~~
29 ~~California real property is paid by the original or extended due date~~
30 ~~of the transferor's return for the taxable year in which the~~
31 ~~disposition occurred.~~

32 ~~(4) requirement.~~
33

34 (3) The real estate escrow person and the transferee ~~shall~~ is not
35 be liable under paragraph (1) or subdivision (d), if the failure to
36 withhold is the result of the real estate escrow person's reliance,
37 based on good faith and on all the information of which he or she
38 has knowledge, upon a written certificate executed by the
39 transferor under penalty of perjury certifying to any of the
40 following:

(A) Where the transferor is an individual, *trust, estate, or a corporation without a permanent place of business in California*:

(i) That the California real property being conveyed is the principal residence of the transferor within the meaning of Section 121 of the Internal Revenue Code *relating to the exclusion of gains from sale of a principal residence, and all of the gain on the sale of the principal residence is excludable under Section 121 of the Internal Revenue Code.*

(ii) That the California real property being conveyed is or will be exchanged for property of like kind within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

(iii) That the California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(iv) That the California real property transaction will result in *a net loss or gain that is not required to be recognized* for California income tax purposes.

(B) Where the transferor is a corporation, that the transferor is a corporation with a permanent place of business in California.

~~(5)~~

~~(4)~~ Any transferor who for the purpose of avoiding the withholding requirements of subdivision (e) ~~or (f)~~ of Section 18662 knowingly executes a false certificate pursuant to this subdivision ~~shall be~~ *is* liable for twice the amount specified in subdivision (d).

~~(6) Unless the failure to notify is due to willful disregard of the withholding requirements of subdivision (e) or (f) of Section 18662, the real estate escrow person shall not be liable under this subdivision if the disposition of California real property occurs prior to July 1, 1991.~~

(f) The amount of tax required to be deducted and withheld under this article shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes

- 1 imposed by Part 10 (commencing with Section 17001) or Part 11
- 2 (commencing with Section 23001).

O

